

ORDINANCE NUMBER O- 19883 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 28 2009

AN ORDINANCE PROVIDING FOR DEFENSE AND
INDEMNIFICATION OF COMMUNITY PLANNING GROUPS.

WHEREAS, the successful implementation of the General Plan of the City of San Diego requires the thoughtful and deliberate development and implementation of community plans; and

WHEREAS, the development of community plans requires the cooperation and participation of citizens who have the personal knowledge of the needs and aspirations of their respective communities; and

WHEREAS, the City Council has adopted Council Policy 600-5 entitled "Community Plans" which provides, in part, that citizens' groups be established for the purpose of providing a formal organizational structure for coordination and communication with City planning staff; that said citizens' organizations shall contain as broad a base of local representation as is feasible and practical; and that groups be aware of their duties and responsibilities in the planning process and express a willingness to accept such responsibilities; and

WHEREAS, the City Council has adopted Council Policy 600-9 entitled "Community Planners Committee" which provides, in part, that, in an advisory capacity, the Community Planners Committee [CPC] shall participate in reviewing and recommending to appropriate bodies actions deemed necessary and desirable for the timely and continued effectuation of goals, objectives and proposals contained in the General Plan and that it shall serve in an advisory capacity to the community planning groups with a primary goal of achieving maximum coordination of planning matters on a comprehensive or citywide basis, and promotion of solutions of matters of mutual concern shared among the communities of San Diego; and

WHEREAS, the City Council has adopted Council Policy 600-24 entitled "Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups," which provides a procedure under which citizens who are interested in participating in the planning process in an advisory capacity may form organizations and request recognition, in their advisory capacity, by the City Council as community planning groups; and

WHEREAS, community planning groups devote countless hours of their time and substantial private resources in assisting the City of San Diego in the development and implementation of community plans and the General Plan; and

WHEREAS, both community planning group members and non-members serve together on subcommittees of community planning groups and perform a necessary function in the planning process; and

WHEREAS, the voluntary efforts of community planning groups and subcommittee members are of inestimable value to the citizens of the City of San Diego; and

WHEREAS, recent developments have caused community planning groups not committee members and the CPC to become concerned about possible exposure to litigation arising from participation in the planning process; and

WHEREAS, the concerns about personal exposure to litigation continue to jeopardize the vitality of the planning process and, unless eliminated, may cause the collapse of the process that provides essential citizen participation; and

WHEREAS, the Council of the City of San Diego finds and declares that the provision of defense and immunity of any community planning group, or the elected or appointed members, subcommittee members, or former members thereof, acting in conformance with Council Policy 600-24, would constitute expenditure of public funds which serves the highest public interest and purpose; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Except as hereinafter provided, the City of San Diego shall provide for the defense and indemnity of the following: the CPC established by Council Policy 600-9, and any community planning group, including its subcommittees, established pursuant to Council Policy 600-24, both entities hereafter referred to as "group"; and the duly elected or appointed members, subcommittee members, or former members, hereafter also referred to as "people" or "person," thereof against any claim or action against such group, member, or former member, if all of the following circumstances exist:

- A. The person is, or was, a duly-elected or appointed member of a group recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24;
- B. The person attended a Community Orientation Workshop [COW] conducted by the City of San Diego, prior to participating in the activity which gave rise to the claim or action against the group, member, or former member; or, if a COW was not yet available, prior to the person's participation at his or her first group meeting, the person read the Community Orientation Workshop Handbook and certified on the record at that meeting that the person completed such review, and then attended the first COW available to that person. Upon the availability of the COW electronically, a person shall be required to attend the COW or participate in the electronic version within sixty (60) days of being duly elected or appointed in order to qualify for the indemnity and defense provided herein;
- C. The alleged act or omission occurred or was authorized during a lawful meeting of the group or subcommittee thereof;
- D. The alleged act or omission was within the reasonable scope of duties of a group as described in Council Policies 600-5, 600-6, 600-9 and 600-24, and was not in

violation of any of those Council Policies, or any provision of the bylaws adopted by the group and approved and/or adopted by the appropriately-designated City officials or City entities;

- E. The person or group made a request in writing to the City Attorney for defense and indemnification no later than ten (10) working days from being served or notified of such legal papers;
- F. The person or group performed his, her or its duties in good faith with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances;
- G. The person or group reasonably cooperates with the City Attorney in the defense of the claim or action; and
- H. The person's or group's actions or failures to act were not due to actual fraud, corruption, actual malice or bad faith.
- I. Any person who is a member of a subcommittee, and is identified on the record and within the minutes upon their election or appointment, or during the first planning group meeting that occurs after that person joins the subcommittee, whichever is earlier.

Section 2. In the event the City Attorney determines that a person or group is not entitled to or should not receive defense and indemnification under this ordinance, the City Attorney shall promptly advise the City Council and the person or group. The City Attorney shall not withdraw from such defense, and the City shall not deny such indemnification, under this section without the approval of the City Council. Nothing contained herein relieves the City of San Diego from its obligations under Section 1 to provide a defense and indemnification under the

conditions specified. The City of San Diego may provide a defense to a person or group under a reservation of rights.

Section 3. The provisions of this ordinance apply only to members, subcommittee members, or former members of groups established and recognized by the City Council pursuant to Council Policy 600-9 and Council Policy 600-24.

Section 4. Defense and indemnification shall not be provided by the City of San Diego in any administrative or judicial proceeding initiated by a group, its members, or its subcommittee members, against the City of San Diego, its agencies or representatives or any other party or organization nor shall representation and indemnification be provided to a group, its members, or its subcommittee members, against damages to any person or organization which are alleged to have resulted from the initiation of any administrative or judicial proceeding by a group, its members, or its subcommittee members.

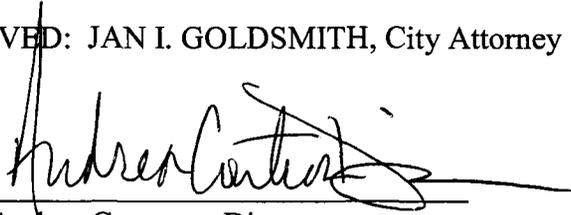
Section 5. In no event shall defense or indemnification be provided against a claim or judgment for punitive damages.

Section 6. This ordinance does not constitute an admission or a waiver of the position of the City of San Diego that groups and the members thereof are not officers, employees or servants of the City of San Diego.

Section 7. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Andrea Contreras Dixon
Deputy City Attorney

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05/22/09
COR. COPY 07/06/09
Or.Dept: City Attorney
O-2009-154
MMS #7405

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 21 2009.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 7-28-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor